

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Request for Waiver by)	
)	
Center City School)	File No. SLD-325719
Salt Lake City, Utah)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Associations, Inc.)	

ORDER

Adopted: November 6, 2002

Released: November 7, 2002

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Waiver Request filed by Center City School (CCS), Salt Lake City, Utah, seeking waiver of the Commission's rules governing the schools and libraries universal service support mechanism.¹ CCS requests waiver of the filing deadline for Funding Year 2002.² For the reasons set forth below, we deny CCS's Waiver Requests.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to the Schools and Libraries Division (SLD) of the Administrator a completed FCC Form

¹ Letter from James Ramsay, Center City School, to Federal Communications Commission, filed May 15, 2002 (Waiver Request). Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Universal Service Administrative Company (Administrator) may seek review from the Commission. 47 C.F.R. § 54.719(c).

² See Waiver Request. Previously, this funding period would be referred to as Funding Year 5. Funding periods are now described by the year in which the funding period starts. Thus the funding period which began on July 1, 2002 and ends on June 30, 2003, previously described as Funding Year 5, and is now called Funding Year 2002. The funding period which begins on July 1, 2003 and ends on June 30, 2004, previously described as Funding Year 6, is now called Funding Year 2003, and so on.

³ 47 C.F.R. §§ 54.501–54.503.

470, in which the applicant sets forth its technological needs and the services for which it seeks discounts.⁴ Once the applicant has complied with the Commission's competitive bidding requirements and entered into an agreement for eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the carrier with whom the applicant has entered an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.⁵ The Commission's rules require that the applicant file a completed FCC Form 471 by the filing window deadline to be considered pursuant to the funding priorities for in-window applicants.⁶ The last day of the filing window for Funding Year 2002 was January 17, 2002.⁷

3. The record reveals that CCS filed its FCC Form 470 on December 28, 2001.⁸ As CCS noted, the Commission's competitive bidding rules require that applicants allow for 28 days before submitting their FCC Form 471.⁹ CCS submitted the electronic portion of its FCC Form 471 on January 29, 2002, and mailed the Block 6 Certifications and Signature pages and Item 21 Attachment on February 5, 2002.¹⁰ Therefore, CCS did not complete the filing of its FCC Form 471 application until February 5, 2002, more than two weeks after the filing window had closed.

4. CCS admits that it was late in submitting its FCC forms, explaining that it was misled by confusing information and an omission by SLD.¹¹ CCS argues that the SLD website provides ambiguous instructions about the timing for filing the FCC Form 470. CCS refers to instructions that state that the FCC Form 470 could be filed at "anytime in the calendar year," but early enough to achieve competitive bidding and filing window deadlines for the FCC Form 471.¹² CCS states that it called SLD and was told by an SLD representative that the FCC Form 470 could be filed at anytime, but that the FCC Form 471 would not be within window if the FCC Form 470 was not filed before December 20, 2001.¹³ CCS claims that SLD should have provided the FCC Form 470 "deadline" of December 20, 2001 on the website.

5. CCS's Waiver Request can be granted only if waiving the deadline is supported by a showing of good cause.¹⁴ A deviation from a general rule is not permitted unless special circumstances warrant it and the deviation would better serve the public interest than strict

⁴ 47 C.F.R. § 54.504(b).

⁵ 47 C.F.R. § 54.504(c).

⁶ 47 C.F.R. §§ 54.504(c), 54.507(g).

⁷ SLD website, Urgent Reminder of Filing Requirements for Year 5 (January 10, 2002) <<http://www.sl.universalservice.org/whatsnew/012002.asp#011002b>>.

⁸ FCC Form 470, Center City School, posted December 28, 2001.

⁹ Waiver Request.

¹⁰ FCC Form 471, Center City School, filed January 29, 2002 (electronic portion submitted January 29, 2002; envelope containing Block 6 Certifications and Signature pages and the Item 21 Attachment with postmark date of February 5, 2002).

¹¹ Waiver Request.

¹² *Id.*

¹³ *Id.*

¹⁴ See 47 C.F.R. § 1.3.

adherence to the general rule.¹⁵ SLD reviews and processes thousands of applications each year, and therefore it is administratively necessary to place on the applicant responsibility for complying with rules and procedures.¹⁶ Timely submissions are needed because, under the funding mechanism, all requests for funding received within the initial filing deadline must be analyzed together in order to allocate funds pursuant to the Commission's funding priorities.¹⁷

6. As we have consistently held in the past, it is the applicant who has responsibility ultimately for the timely submission of its application.¹⁸ We have denied waiver requests based upon an applicant's claim that it simply misunderstood the rules.¹⁹ In particular, we have denied requests for waivers when applicants claimed that they misunderstood the rules for filing the FCC Form 470 in a timely manner.²⁰ We have also held that the failure of SLD representatives to respond accurately to inquiries does not relieve applicants of this responsibility.²¹

7. Under these precedents, we hold that CCS's reliance upon the SLD representative's advice and its claim of ambiguous instructions do not constitute special circumstances warranting deviation from the general rule. Information provided by SLD indicating that the FCC Form 470 could be filed at anytime in the context of other filing requirements is not erroneous. The instructions for the FCC Form 470 and the SLD website noted that the FCC Form 470 must be filed with enough time to allow for the 28-day competitive bidding period to run before filing the FCC Form 471.²² Additional information on the web site clearly indicated that FCC Form 471 must be filed within a certain filing window.²³ We

¹⁵ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁶ *See Request for Review by Anderson School Staatsburg, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610, para. 8 (Com. Car. Bur. 2000).

¹⁷ *See* 47 C.F.R. § 54.507(g).

¹⁸ *See FCC Overrules Caldwell Televisions Associates, Ltd.*, Public Notice, 58 RR 2d 1706, 1707 (1985) (Caldwell).

¹⁹ *Request for Review by St. Mary's Public Library, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. NEC.471.12-07-99.02000002, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 12936, para. 5 (Com. Car. Bur. 2001) (denying a waiver request to the extent it is requested due to misunderstanding of the program's rules).

²⁰ *See, e.g., Request for Waiver by art in context, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-262426, CC Docket Nos. 96-45 and 97-21, Order, DA 02-642 (Com. Car. Bur. rel. March 19, 2002); *Request for Waiver by Loutit District Library, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-279432, CC Docket Nos. 96-45 and 97-21, Order, DA 02-644 (Com. Car. Bur. rel. March 19, 2002).

²¹ *Request for Review by Smackover Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-205330, CC Docket Nos. 96-45 and 97-21, Order, DA 01-2963, para. 8 (Com. Car. Bur. rel. December 19, 2001).

²² *See* Instructions for Completing the Schools and Libraries Universal Service Description of Services Requested and Certification Form, OMB 3060-0806 at 4 (September 1999) (FCC Form 470 Instructions); SLD website, Tip 2: File Your Form 470 Anytime During the Program Year, <http://www.sl.universalservice.org/reference/470Tips_Yr4.asp#1>. This website advice did not change in any substantive way from Funding Year 2001.

²³ SLD website, Urgent Reminder of Filing Requirements for Year 5 (January 10, 2002) <<http://www.sl.universalservice.org/whatsnew/012001.asp#011002b>>.

conclude that CCS has failed to demonstrate special circumstances upon which its Waiver Request can be granted.

8. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Waiver Request filed by Center City School, Salt Lake City, Utah on May 15, 2002 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert
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Wireline Competition Bureau